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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,400	09/16/2003	Peter Phelps	9-13528-197US	9677
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OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			EXAMINER HALIYUR, VENKATESH N	
			ART UNIT 2619	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/662,400	Applicant(s) PHELPS ET AL.	
	Examiner Venkatesh Haliyur	Art Unit 2619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10,13-18,21-27 (claims 1-9,11,12,19,20 canceled) is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13,16-18 and 21-27 is/are rejected.
- 7) ☒ Claim(s) 10,14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed on 09/28/2007 is sufficient to overcome the rejection of claims 1-20 based upon Humblet et al. Therefore the rejection of claims communicated via office action of 5/21/2007 has been withdrawn. However the amendments to claims necessitated a new ground(s) of rejection in view of Humblet et al. Rejection follows.
2. Claims 10, 13-18, 21-27 are still pending in the application. Claims 1-9, 11-12, 19-20 are canceled. Claims 21-27 are new.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18,24, rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. In lines 4-5 of claim 18, the recitation of phrase(s) "sending a pre-empted switch request message to through the protection channel..." has grammatical

errors and hence is not meaningful when this limitation is read with rest of the claim.

b. In lines 2-4 of the preamble of claim 24 recite the limitation is recited in alternative form with the phrase "...request priority values with any one or more of:" however, the body of claim 24, recites claim limitations as "a degraded condition of the working channel; and a test protection switch initiated by network management" which is not meaningful when the whole claim limitation is read. It appears that claim 24 recites that both the degraded condition and the test switch protection initiation priority values are required for processing.

c. Appropriate corrections are required to claims 18 and 24.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 16-18, 22-27, are rejected under 35 U.S.C. 102(e) as being anticipated by Humblet et al [US Pat: 6,992,978].

Regarding claim 16, Humblet et al in the invention of "Method and System for Path Protection in a Communications Network" disclosed a protection switch processor **(fabric controller, 6A)** of an optical network that supports protected traffic and extra traffic at predefined grades of service **(preemptable and non-preemptable service)** using pre-provisioned working and protection channels **(paths WP and PP in Figs 1-4, col 5, lines 43-67, col 6, lines 1-18)**, the protection switch processor executing under control of software for applying a protection access policy for controlling access to each protection channel of the network, the software being stored on a computer-readable medium and comprising executable instruction code for **(col 8, lines 5-27)**: determining a priority value associated with a protection switch request message for switching protected traffic from a working channel to its associated protection channel **(col 6, lines 19-24)**; determining an occupancy of the protection channel **(col 2, lines 59-67)**; determining a occupant priority value associated with the protection channel by determining a service priority value associated with an occupant of the protection channel if the protection channel is occupied **(high and low priority traffic, col 6, lines 25-34)**; comparing the priority value associated with the protection switch request message to the occupant priority value, refusing the protection switch request if a bandwidth of the working channel to be switched is greater than an unoccupied portion of the request priority value of the protection switch request is less than or equal to the occupant priority value of the protection channel **(col 5, lines 31-43)**.

Regarding claim 17, Humblet et al disclosed admitting the protection switch request if the protection channel is idle (**no preemption of traffic on the protection link is needed**), or the occupant priority value associated with the protection channel is lower than the priority value associated with the protection switch request message (**col 6, lines 4-17**).

Regarding claim 18, Humblet et al disclosed and sending a pre-empted switch request message through the protection channel to direct unprotected traffic being transported through the protection channel to relinquish the data transport capacity of the protection channel (**preempt the protection path, col 6, lines 29-39**).

Regarding claim 21, Humblet et al disclosed in an optical network including predetermined protection channels for transport of protected traffic during a failover, a method for controlling access to each protection channel (**col 5, lines 31-48, Fig 1**), the method comprising: assigning one of a predetermined set of at least two service priority values (**high and low priority traffic**) to each flow of unprotected traffic being transported through the network, the unprotected traffic being transported through the network using at least one idle protection path (**no preemption of traffic on the protection link is needed, col 5, lines 49-67, col 6, lines 1-2, Fig 2**); assigning one of a predetermined set of request priority values to each protection switch request for switching protected traffic from a working channel (**WP**) to its associated protection channel (**PP, col 6, lines 3-18, Fig 3**); and refusing a protection switch request if a bandwidth of the working channel to be switched is greater than an unoccupied portion of the protection channel, and the request priority value of the protection switch request

is less than or equal to the service priority value of unprotected traffic being transported through the protection channel (**col 6, lines 19-39, Fig 4**).

Regarding claim 22, Humblet et al disclosed wherein the predetermined set of at least two service priority values comprises a first service priority value corresponding to a pre-emptable class of service, and a second service priority value corresponding to a non-pre-emptable traffic class of service (**col 5, lines 31-42**).

Regarding claims 23-24, Humblet et al disclosed the first service priority value is higher than at least one of the predetermined set of request priority values and wherein the first service priority value is higher than request priority values associated with any one or more of a degraded condition of the working channel; and a test protection switch initiated by network management (**col 6, lines 29-39, col 11, lines 42-63, Fig 7**).

Regarding claim 25, Humblet et al disclosed wherein the second service priority value is higher than a request priority value associated with a signal fail condition of the working channel (**col 6, lines 19-28**).

Regarding claim 26, Humblet et al disclosed in an optical network including predetermined protection channels for transport of protected traffic during a failover, a method for handling a protection switch request (**Figs 1-4, 6A/B**), the method comprising: receiving the protection switch request for switching protected traffic from a working channel to its associated protection channel (**col 5, lines 31-48, Fig 1**), the protection switch request including a request priority value (**high and low priority traffic**); determining a current occupancy of the protection channel (**col 6, lines 19-24**), the occupancy being one of idle, occupied by unprotected traffic associated with one of

a plurality of grades of service (**preemptable and non-preemptable service**), and occupied by protected traffic switched from a working channel with a specific request priority (**paths WP and PP in Figs 1-4, col 5, lines 43-67, col 6, lines 1-18**); and refusing the protection switch request if a bandwidth of the working channel to be switched is greater than an unoccupied portion of the protection channel (**col 3, lines 2-16**), and the request priority value of the protection switch request is less than or equal to the service priority value of unprotected traffic being transported through the protection channel (**col 5, lines 31-43**).

Regarding claim 27, Humblet et al disclosed admitting the protection switch request if the priority value of the switch request is greater than the service priority value associated with the unprotected traffic being transported through the protection channel (**col 5, lines 31-37**).

Response to Arguments

6. Applicant's argument, see remarks filed on 9/28/2007 with respect to rejection of claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

7. Claims 10, 14-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art including patents and publications fail to teach the claim limitations as disclosed in the instant application related to protection switching method the steps of refusing the protection switch request comprises pending the request so that if the unprotected traffic being transported through the protection channel subsequently releases the protection channel, a network element that issued the priority switch request is notified and forwarding a protection switch request pended message along the protection channel if the occupied portion of the data transport capacity of the protection channel subsequently becomes unoccupied, forwarding a message along the protection channel indicating that the protection channel is idle and admitting the protection switch request by forwarding a pre-empted switch request message through the protection channel to request the unprotected traffic being transported through the protection channel to relinquish the data transport capacity protection channel.

Conclusion

8. Any inquiry concerning this communication or earlier communications should be directed to the attention to Venkatesh Haliyur whose phone number is 571-272-8616.

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The examiner can normally be reached on Monday-Friday from 9:00AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edan Orgad can be reached @ (571)-272-7884. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (571)-272-2600 or fax to 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

Venkatesh Haliyur

Patent Examiner

UH 12/06/07

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SUPERVISORY PATENT EXAMINER

Edan Orgad